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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE WESTERN DISTRICT OF WASHINGTON**

9 STATE OF WASHINGTON,
10

11 Plaintiff,

12 v.

13 BETSY DEVOS, in her official capacity as
Secretary of the United States Department of
14 Education; and the UNITED STATES
DEPARTMENT OF EDUCATION,

15 Defendants.
16

Case No. 2:20-cv-1119-BJR

DEFENDANTS' REPLY IN SUPPORT OF
THEIR MOTION FOR CLARIFICATION
REGARDING SCOPE OF PRELIMINARY
INJUNCTION

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19 **MOTION FOR CLARIFICATION**
20 **REGARDING SCOPE OF PRELIMINARY INJUNCTION**

21 Defendants established in their opening motion for clarification that the Court's August
22 21, 2020 preliminary injunction should not have nationwide effect because the Court made no
23 determination that the State needed nationwide relief to redress its injuries, nor was there any
24 evidence in the record about harm beyond Washington's borders. Defs.' Mot. for Clarification
25 Regarding Scope of Preliminary Injunction, ECF No. 55, at 2–4 ("Defs.' Mot."). The motion
26 relied upon controlling Ninth Circuit authority, the most recent being *City & County of San*
27
28

1 *Francisco v. Barr*, 965 F.3d 753, 765–66 (2020). *Id.* Since the motion was filed, a district court
 2 in related litigation in the Northern District of California enjoined application of the equitable-
 3 services rule against only plaintiffs in that suit. *State of Michigan v. DeVos*, No. 3:20-cv-04478-
 4 JD, ECF No. 82 (N.D. Cal. Aug. 26, 2020). *See also* Defs.’ Mot. at 3 n.2 (noting other cases
 5 challenging rule).
 6

7 In opposing the motion, the State attempts to rely on 5 U.S.C. § 705 as authority for a
 8 nationwide injunction. The first problem with this argument is that the State did not move for a
 9 stay of the effective date of the rule under section 705. Instead, it moved for a preliminary
 10 injunction pursuant to Federal Rule of Civil Procedure 65. Pl.’s Proposed Order in supp. of PI
 11 Mot. at 2, ECF No. 8-1. There is no mention of 5 U.S.C. § 705 in the State’s PI motion.
 12

13 The second problem with Plaintiff’s argument is that the text of section 705 provides that
 14 a court may postpone the effective date of an agency action only “to the extent necessary to
 15 prevent irreparable injury.” 5 U.S.C. § 705. That command is in line with *California v. Azar*,
 16 another APA case, which held—without mentioning section 705—that “scope of the remedy
 17 must be no broader and no narrower than necessary to redress the injury shown by” plaintiffs.
 18 911 F.3d 558, 584 (9th Cir. 2018); *see also City & Cnty. of San Francisco*, 965 F.3d at 765.
 19

20 A third problem is that section 705 cannot negate the Article III requirement that, as
 21 discussed in the opening motion, “[f]or all relief sought, there must be a litigant with standing.”
 22 *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017) (citation omitted); *see also*
 23 *Gill v. Whitford*, 138 S. Ct. 1916, 1930, 1933 (2018) (“The Court’s constitutionally prescribed
 24 role is to vindicate the individual rights of the people appearing before it.”). Plaintiff’s reliance
 25 on *Trump v. International Refugee Assistance Project* (“IRAP”), 137 S. Ct. 2080 (2017), does
 26 not overcome this bedrock principle. The question is not, as the State asserts, whether
 27
 28

1 “nationwide injunctions [can] protect[] parties other than the plaintiff,” *see* Opp. at 4, but instead
2 whether any injunction should grant relief beyond the harm demonstrated by a plaintiff. For
3 instance, in *IRAP* the Supreme Court narrowed injunctions to prevent enforcement of an
4 executive order against individuals with a bona fide relationship to the United States, while
5 staying their application as to individuals without such a relationship. 137 S. Ct. at 2087. In so
6 doing, the Court emphasized that “[c]rafting a preliminary injunction is an exercise of discretion
7 and judgment,” *id.*, and tailored the injunctions to accord with the harms demonstrated by
8 plaintiffs in those suits. That same reasoning applies here.

10 Beyond Plaintiff’s belated and unavailing reliance on section 705, it fails to grapple
11 meaningfully with Defendants’ arguments for a properly tailored injunction. First, although the
12 State focuses on the absence of limiting language in the order’s concluding paragraph, the State
13 ignores the fact that the Court’s findings of harm focused exclusively on impacts *to*
14 *Washington*—not to the nation as a whole or even to neighboring states. *See* Order Granting
15 Prelim. Inj. (“Order”), ECF No. 54, at 18–20. Plaintiff’s reading of the injunction would create a
16 serious mismatch between the irreparable-harm arguments credited by the Court and the remedy
17 it ordered as a result.

20 Second, the State ignores the fact that it neither pled, briefed, nor submitted evidence in
21 support of a nationwide injunction. It should not now be heard to request relief going
22 substantially beyond that which it endeavored to obtain.

24 And third, its half-hearted attempt to argue that Washington would be harmed by
25 enforcement of the interim final rule (“IFR”) in *other* states is unsupported by either evidence or
26 common sense. Plaintiff contends that suspension of the IFR “beyond Washington’s border is
27 necessary to protect the most vulnerable Washington students from the spread of COVID-19.”
28

1 See Pl.'s Opp. to Mot. for Clar., ECF No. 58, at 3. Plaintiff's rationale justifying that argument
 2 makes little sense. According to Plaintiff, limiting the injunction to the State of Washington
 3 "would leave students and families in neighboring states without the protections Congress
 4 intended, and these individuals could and would freely travel across Washington's borders." *Id.*
 5 But Plaintiff fails to explain why the IFR would result in increased cases of coronavirus in
 6 neighboring states, let alone why infected individuals would travel to Washington and infect
 7 students enrolled in Washington schools. Plaintiffs have certainly offered no evidence to support
 8 such a theory. Simply put, Washington has failed to present a cogent, non-speculative argument
 9 that decreased public-school funding in other states will impact coronavirus infection rates at
 10 all—much less within Washington's borders—and it likewise has submitted no evidence that it
 11 will suffer irreparable harm should the IFR take effect in neighboring states.
 12

13 CONCLUSION

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 15 For these reasons and the reasons set forth in Defendants' motion, Defendants
 16 respectfully request that the Court clarify that its August 21, 2020 Order provides preliminary
 17 relief from the IFR to the State of Washington, exclusively.
 18

19 DATED: September 2, 2020

Respectfully submitted,

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